IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No 245 of 2002

For Approval and Signature:

HON'BLE MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MADHU TEXTILES AHMEDABAD LTD.

Versus

OFFICIAL LIQUIDATOR

Appearance:

1. COMPANY PETITION No. 245 of 2002

MRS VD NANAVATI and MR V K BHATT for Petitioner No. 1

..... for Respondent No. 1

MR DS VASAVADA for Respondent No. 2

MR RM DESAI for Respondent No. 3

MR SANDEEP N BHATT for Respondent No. 4

MR INDRAVADAN PARMAR for Respondent No. 5

NOTICE SERVED for Respondent No. 6

MR H M BHAGAT for Respondent No. 7

CORAM : HON'BLE MR.JUSTICE K.A.PUJ

Date of decision: 27/04/2005

ORAL JUDGEMENT

The petitioner, namely, Madhu Textiles Ahmedabad Limited has filed this petition under Sections 391 to 394 of the Companies Act, 1956 praying for the compromise and arrangement as per the Scheme proposed by the Company produced at Annexure B to the petition for sanction of this Court so as to make it binding on its Members and Secured Creditors with Banks and Financial Institutions.

2. The Court has admitted the petition on 03.02.2003 and notice was issued to the Central Government. The Court has also passed necessary order with regard to the advertisement to be published in "Indian Express" and "Sandesh" - both Ahmedabad Edition. Subsequently, the Secured Creditors were joined as parties vide order dated 30.09.2004 and accordingly, IDBI, ICICI, IFCI, IRBI, SBI and SBS as well as Majoor Mahajan Sangh, Kadi and the Official Liquidator were joined as parties - respondents. Subsequently, since ICICI Bank has assigned its rights in respect of its debts in favour of Kotak Mahindra Bank Ltd., notice was issued to the said party and appearance was filed on behalf of Kotak Mahindra Bank Ltd.

3. Heard Mr. V.K. Bhatt, learned advocate appearing for the petitioner, Mr. R.M. Desai, learned advocate appearing for State Bank of India, Mr. D.S. Vasavada, learned advocate appearing for Majoor Mahajan Sangh, Kadi, Mr. H.M. Bhagat, learned advocate appearing for Kotak Mahindra Bank Ltd. and Mr. Indravadan Parmar, learned advocate appearing for IDBI and Mr. Sandeep N. Bhatt, learned advocate appearing for State Bank of Saurashtra.

4. Mr. V.K. Bhatt, learned advocate appearing for the petitioner has submitted that the petitioner Company was incorporated in March, 1983 and has started its manufacturing activities in February, 1985. Initially, the Company carried on its activities effectively and it was a profit making Company. However, due to recession in Textile industry, the Company started facing difficulties due to the circumstances beyond its control. As a result, the Company became a sick company within the meaning of Section 3(1)(O) of the Sick Industrial Companies (Special Provisions) Act and a Reference was accordingly made to the Board for Industrial and Financial Reconstruction (BIFR) which was numbered as Case No. 76 of 1992. During the various hearings before the BIFR, the consensus was that the Company could be revived if the proper scheme of rehabilitation was

prepared and implemented. Accordingly, a Scheme was prepared and finalised with the approval of the Industrial Development Bank of India (IDBI) which is the Operating Agency and was considered by BIFR. As per the said Scheme, the promoters were required to bring Rs. 355 Lacs by way of their contributions. Promoters complied with this requirement by subscribing to the additional share capital of Rs. 355 Lacs. However, even after bringing the aforesaid contribution by the promoters, the Scheme could not be implemented as expected due to the strike of the workers for a period of more than four months. The State Government did not co-operate by granting necessary concessions as envisaged in the Scheme. As a result thereof, the Scheme could not be implemented and the Company incurred further losses.

5. Mr. Bhatt has further submitted that in view of the non-implementation of this Scheme, further negotiations and discussions took place between the representatives of the Company and the representatives of IDBI and other Secured Creditors. IDBI got valuation of the property made on the basis of the distressed sales which according to the valuer appointed by the IDBI amounted to Rs. 408.10 Lacs. Taking this valuation as the basis, at the joint meeting of the secured creditors convened by IDBI, it was decided that the distress value on calculation came approximately equivalent to 62.99% of the outstanding principal dues of Rs. 647.84 Lacs of the financial institutions and Banks. One of the conditions of the Scheme was that the promoter was required to bring 100 lacs within a period of one month which the promoter could not do. As a result thereof, the BIFR formed an opinion that the Company should be wound up and forwarded its opinion to wind up the Company to this Court. The said opinion was registered as Company Petition No. 32 of 2000. The Company challenged the order of BIFR before the appellate authority. But the said appeal came to be rejected by the appellate authority. The Company thereafter challenged the aforesaid order of the appellate authority before this Court by way of S.C.A. No. 5125 of 2000. During the pendency of the Company Petition as well as the Writ Petition, the Company filed Company Application No. 288 of 2000 praying for rehabilitation of the Company. All these three matters were heard together on 10.01.2001 and order was passed on that date whereby S.C.A. No. 5125 of 2000 as well as Company Application No. 288 of 2000 were dismissed and Company Petition No. 32 of 2000 was admitted and order of advertisement was passed.

6. Being aggrieved by the said order, the Company

went in appeal. The appeal against the order dismissing the writ petition was numbered as LPA No. 20 of 2001 and the appeal against the order of admission and advertisement was numbered as O.J. Appeal No. 03 of 2001. The said appeal and OJ Appeal were disposed of by the Division Bench of this Court by a common order dated 15.02.2002 and by virtue of the said order, the Company was permitted to withdraw the appeal and to approach the learned Company Judge for recalling the order dated 10.01.2001. Accordingly, Company Application No. 82 of 2002 has been filed. During the course of the hearing of the said application, a statement was made on behalf of the Company on 19.04.2002 that necessary application under Section 391 of the Act would be made by the Company for consideration and approval of the rehabilitation Scheme. On the basis of the said statement, the said Company Application was disposed of and in compliance of the statement made during the course of hearing of the said application, the present rehabilitation scheme is submitted for consideration and approval of all concerned.

7. Mr. Bhatt has further submitted that the present Scheme is prepared with the help of professionals and is based on the liability of Secured Creditors at 408.10 Lacs. The Scheme envisages a production at 60% capacity utilisation in the initial year which will be increased upto 85%. Subsequently till the end of the implementation of the Scheme. This basis is conservative basis and it is expected that unless unforeseen circumstances, the Company would be able to achieve its production targets. The financial presumptions are based on standard principles as mentioned in the Scheme at every stage. The implementation of the Scheme also requires certain sacrifices from the promoters, financial institutions, Banks, Creditors and other Statutory agencies. Mr. Bhatt has further submitted that the promoters have already brought Rs. 135 lacs and have agreed to bring a further amount of Rs. 61 Lacs towards the working capital for smooth working of the Company at 60% capacity production. As and when capacity utilisation increases upto 85%, the Promoters undertook to bring necessary working capital. Mr. Bhatt has further submitted that the Secured Creditors will be paid total amount of Rs.408.10 Lacs including Rs. 25 Lacs deposited in this Court. Remaining Rs.383.10 Lacs will be paid to the Financial Institutions and Banks as under :-

(1) Rs. 25 Lacs already deposited as per the direction of this Court.

(2) Rs. 50 Lacs down payment to be made without interest within six months of sanction by this Court, of which 25 Lacs to be paid within three months and remaining 25 Lacs at the end of six months.

(3) Balance Rs.333.10 Lacs will be paid in 36 monthly installments after down payment carrying interest at PLR.

8. Mr. Bhatt has further submitted that no monetary sacrifices are expected from the labour at this stage. But it is expected that taking into consideration the implementation of the Scheme, if need arises, labour will cooperate.

9. Based on the above broad parameters of the Scheme, Mr. Bhatt has submitted that Company Application No. 132 of 2002 was filed before this Court and this Court vide order dated 10.05.2002 in Company Application No. 132 of 2002 has directed to convene the meetings of the Members, Secured Creditors (Banks), Secured Creditors (Financial Institutions), representatives of the State Government, Regional Provident Fund Commissioner and the Gujarat Electricity Board, for the purpose of considering and if thought fit, to approve with or without modification, the said compromise or arrangement and further appointed the Chairman of the meeting and the Chairman was directed to produce the report within 15 days of the conclusion of the meeting. The notice of the meeting was sent to the Members under Certificate of Posting and to Secured Creditors by Regd. post. The notice was also advertised in the newspapers as directed in the issue of 'Indian Express' dated 30.05.2002 and in the issue of 'Sandesh' dated 21.05.2002.

9. Pursuant to the aforesaid order, the Chairman has produced his report dated 24.07.2002 before the Court and as per his report, the Shareholders have unanimously approved the Scheme as a whole. The Secured Creditors (Banks) have approved the Scheme as modified by the Company vide letter dated 25.05.2002. The Secured Creditors (Financial Institutions) have approved the Scheme with little modification as stated in the resolution keeping the total amount payable to the Secured Creditors (Banks and Financial Institutions) undisturbed. The State Government has not approved the resolution put up at the meeting as far as it relates to the sacrifices by the State Government. The Regional Provident Fund Commissioner did not attend to the

meeting. Hence, the Scheme qua the Regional Provident Fund Commissioner stands unapproved. Similarly, Gujarat Electricity Board did not attend to the meeting. Hence, the Scheme qua Gujarat Electricity Board stands unapproved.

10. Mr. Bhatt has further submitted that there is all possibility of revival of the Scheme and since the Secured Creditors and Financial Institutions have approved the Scheme, the scheme may be sanctioned. So far as labourers are concerned, the Scheme is not proposed in respect of them and no sacrifice was expected from them. The workers have already tendered their resignations and as on the date of the presentation of the Scheme, their dues are not outstanding. As far as Unsecured Creditors are concerned, the meetings were not called for. However, as soon as the Company is revived and production is started, they will settle their dues. Considering all the above aspects of the matter, Mr. Bhatt has submitted that the scheme may be sanctioned by this Court.

11. An affidavit is filed on behalf of IDBI wherein it is stated that IDBI is agreeable to the Scheme only on condition that a particular clause must be inserted in the Scheme whereby the petitioner Company shall file consent terms incorporating the schedule of repayment as stated at page 22 of the Scheme before the D.R.T., Ahmedabad in pending O.A. No. 296 of 2001 filed by the respondent No. 5 and to make the request to D.R.T., Ahmedabad to pass a consent decree in the said application.

12. Mr. V.K. Bhatt, learned advocate for the petitioner has agreed to the said proposal and accordingly, on sanctioning of the Scheme by this Court, necessary application would be filed by the petitioner Company before the D.R.T., Ahmedabad.

13. An affidavit is filed by Kotak Mahindra Bank Limited. Mr. H.M. Bhagat, learned advocate appearing for the Bank has submitted that the present petition has been pending before this Court for the last about 3 years and the petitioner Company has not taken any positive step to get the Scheme of arrangement sanctioned by this Court. The conduct of the Promoters is very clear. When the lenders had filed suits for recovery of the amounts and enforcement of the guarantees, the Promoters, merely with a view to delay the proceedings and without any intention of honouring the same, had made a proposal for settlement without any real intention of making the

payment. By making the proposal for settlement, the Promoters had managed to stay the proceedings against the Company and themselves for such a long time. The lenders have accepted the scheme keeping in mind that the repayment would commence within a reasonable time of their giving approval. It is now more than 3 years since the approval but no payment has yet commenced and because of the lapse of time, value of the settlement amount has, in fact, reduced further from 63% as proposed by the Company earlier. Despite this fact, he has submitted that there is a huge difference in the amount claimed in the O.A. filed by ICICI Bank against the Company before the D.R.T. and the amount which is mentioned in this application. He has, therefore, submitted that the approval is granted by the Bank without prejudice to the claim filed before the D.R.T.

14. Mr. D.S. Vasavada, learned advocate appearing for Majoor Mahajan Sangh, Kadi has strongly objected to the Scheme. He has submitted that workers' interest were not at all taken into consideration while proposing the Scheme. The petitioner Company has employed more than 803 workers. The closure was illegal and the statutory permission as required under Section 25 (2) of the Act was not obtained by the Management. The workers of the petitioner Company were cheated by the Management and they have not been paid wages of the work done for three months prior to the date of closure. Not a single workmen has been paid the wages for the work done prior to the date of closure. As on the date of closure i.e. 01.04.1998, 802 workmen were on the Muster and they have not been paid even wages for the work performed. The workers have not been paid any Gratuity, retrenchment compensation or any form of terminal benefits. The dues of the workers, therefore, should be paid and the workers are entitled to wages upto the date, of course, in view of the judgment of the Hon'ble Supreme Court in the case of M/S. OSWAL AGRO FURANE LTD. AND ANOTHER V/S. OSWAL AGRO FURANE WORKERS UNION AND OTHERS,2005 AIR SCW 1050. The liabilities of the workers are to the tune of Rs. 4 Crores and since the Management has submitted that they do not want any sacrifice from the workers, then they may be directed to deposit the amount of Rs. 4 Crores to test their bonafide and thereafter the Scheme should be considered by this Court. Mr. Vasavada has produced the list of workers along with the requisite details on the basis of which he has claimed that the workers' dues have not been paid.

15. In response to the aforesaid affidavit, the petitioner Company has filed further affidavit on

25.04.2005 wherein it is specifically stated that all the dues of the workers have been duly paid. The figure of 803 workmen given in the affidavit is absolutely wrong. On an average, there were about 350 to 400 workers and they have been duly paid. They have tendered their resignations and all these resignation letters were also available with the Company and details regarding payments made to the workers were also produced on record. On the basis of this evidence, Mr. Bhatt has submitted that there is no justification in saying that the workers' interest were not taken into consideration nor that the workers have not been paid their wages.

16. After having heard learned advocates appearing for the respective parties and after having considered the necessary pros and cons of the proposed Scheme as they were indicated in the form of different affidavit-in-replies, rejoinders and the documentary evidence, the Court is of the view that there is no possibility of revival of the Company. All attempts made in the past have totally failed. The Company was before BIFR for a long time and the BIFR has also expressed its opinion that there is no scope for revival of the Company. On the basis of the opinion forwarded by the BIFR, the winding up petition being Company Petition No. 32 of 2000 is registered which is already admitted and order regarding advertisement was passed. However, because of the pendency of the present proposed Scheme before this Court, the said advertisement was deferred. Though the Secured Creditors in principle have approved the Scheme, they have put certain conditions and sought modifications which are not satisfied by the petitioner Company till this date. No Scheme is proposed for Unsecured Creditors and their dues are also outstanding. The fund position of the petitioner Company is very precarious and the Banks and Financial institutions have made it very clear that they are not going to finance any further amount for starting the project even if the Scheme is sanctioned by the Court. It is very difficult for the petitioner Company to bring the finance even if the production is to be started. The workers have strongly objected to the Scheme. A specific condition was imposed by the statutory Creditor in the meeting that the report from GITCO should be obtained by the petitioner Company. Till this date, the report has not been obtained. When a specific question is raised by the Court, a report was produced by Mr. Bhatt which is of the year 2001 and it is given by Rasendu P. Vora, Chartered Engineer. Even in the present context, the said report is absolutely irrelevant as the unit is virtually closed since 1998 and for the last seven years,

the plant and machineries were totally remained in unutilised condition. For starting this unit, necessary finance is required which may not be provided by the Banks and Financial Institutions and the Promoters are not in a position to bring any finance.

17. Considering all the above aspects of the matter, the Court is of the view that the petitioner Company is not viable and Revival Scheme proposed by the petitioner Company is nothing but merely an eye-wash and it is only with a view to buy time so as to dispose of the assets of the Company. There is no real motive to start the production and no material is produced before the Court so as to inspire the confidence of the Court that the unit will really work if some indulgence is shown by the Court. Though Central Government has been issued notice, no report has been filed till this date by the Regional Director. Hence, everybody is of the view that the proposed Scheme is not workable. This petition is, therefore, dismissed without any order as to costs.

18. Because of the pendency of this petition, the order regarding advertisement was stayed. Since the Court has dismissed the present petition, I.D.B.I. is hereby directed to publish the advertisement as per the order passed by this Court earlier on 10.08.2004 in Company Petition No. 32 of 2000 after 10.05.2005 indicating the date of final hearing on 16.06.2005.

[K.A. PUJ, J.]

#Savariya#

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